

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2040**

61st Legislature  
2009 Regular Session

Passed by the House March 9, 2009  
Yeas 92 Nays 3

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**Speaker of the House of Representatives**

Passed by the Senate April 22, 2009  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2040** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED HOUSE BILL 2040**

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Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Representatives Conway and Condotta

Read first time 02/06/09. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the work of the joint select committee on beer  
2 and wine regulation; amending RCW 66.28.180; adding new sections to  
3 chapter 66.28 RCW; and repealing RCW 66.28.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 66.28 RCW  
6 to read as follows:

7            The legislature recognizes that Washington's current three-tier  
8 system, where the functions of manufacturing, distributing, and  
9 retailing are distinct and the financial relationships and business  
10 transactions between entities in these tiers are regulated, is a  
11 valuable system for the distribution of beer and wine. The legislature  
12 further recognizes that the historical total prohibition on ownership  
13 of an interest in one tier by a person with an ownership interest in  
14 another tier, as well as the historical restriction on financial  
15 incentives and business relationships between tiers, is unduly  
16 restrictive. The legislature finds the modifications contained in this  
17 act are appropriate, because the modifications do not impermissibly  
18 interfere with the goals of orderly marketing of alcohol in the state,  
19 encouraging moderation in consumption of alcohol by the citizens of the

1 state, protecting the public interest and advancing public safety by  
2 preventing the use and consumption of alcohol by minors and other  
3 abusive consumption, and promoting the efficient collection of taxes by  
4 the state.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 66.28 RCW  
6 to read as follows:

7 The definitions in this section apply throughout sections 1 through  
8 8 of this act unless the context clearly requires otherwise.

9 (1) "Adverse impact on public health and safety" means that an  
10 existing or proposed practice or occurrence has resulted or is more  
11 likely than not to result in alcohol being made significantly more  
12 attractive or available to minors than would otherwise be the case or  
13 has resulted or is more likely than not to result in overconsumption,  
14 consumption by minors, or other harmful or abusive forms of  
15 consumption.

16 (2) "Affiliate" means any one of two or more persons if one of  
17 those persons has actual or legal control, directly or indirectly,  
18 whether by stock ownership or otherwise, of the other person or persons  
19 and any one of two or more persons subject to common control, actual or  
20 legal, directly or indirectly, whether by stock ownership or otherwise.

21 (3) "Industry member" means a licensed manufacturer, producer,  
22 supplier, importer, wholesaler, distributor, authorized representative,  
23 certificate of approval holder, warehouse, and any affiliates,  
24 subsidiaries, officers, directors, partners, agents, employees, and  
25 representatives of any industry member. "Industry member" does not  
26 include the board or any of the board's employees.

27 (4) "Person" means any individual, partnership, joint stock  
28 company, business trust, association, corporation, or other form of  
29 business enterprise, including a receiver, trustee, or liquidating  
30 agent and includes any officer or employee of a retailer or industry  
31 member.

32 (5) "Retailer" means the holder of a license issued by the board to  
33 allow for the sale of alcoholic beverages to consumers for consumption  
34 on or off premises and any of the retailer's agents, officers,  
35 directors, shareholders, partners, or employees. "Retailer" does not  
36 include the board or any of the board's employees.

1 (6) "Undue influence" means one retailer or industry member  
2 directly or indirectly influencing the purchasing, marketing, or sales  
3 decisions of another retailer or industry member by any agreement  
4 written or unwritten or any other business practices or arrangements  
5 such as but not limited to the following:

6 (a) Any form of coercion between industry members and retailers or  
7 between retailers and industry members through acts or threats of  
8 physical or economic harm, including threat of loss of supply or threat  
9 of curtailment of purchase;

10 (b) A retailer on an involuntary basis purchasing less than it  
11 would have of another industry member's product;

12 (c) Purchases made by a retailer or industry member as a  
13 prerequisite for purchase of other items;

14 (d) A retailer purchasing a specific or minimum quantity or type of  
15 a product or products from an industry member;

16 (e) An industry member requiring a retailer to take and dispose of  
17 a certain product type or quota of the industry member's products;

18 (f) A retailer having a continuing obligation to purchase or  
19 otherwise promote or display an industry member's product;

20 (g) An industry member having a continuing obligation to sell a  
21 product to a retailer;

22 (h) A retailer having a commitment not to terminate its  
23 relationship with an industry member with respect to purchase of the  
24 industry member's products or an industry member having a commitment  
25 not to terminate its relationship with a retailer with respect to the  
26 sale of a particular product or products;

27 (i) An industry member being involved in the day-to-day operations  
28 of a retailer or a retailer being involved in the day-to-day operations  
29 of an industry member in a manner that violates the provisions of this  
30 section;

31 (j) Discriminatory pricing practices as prohibited by law or other  
32 practices that are discriminatory in that product is not offered to all  
33 retailers in the local market on the same terms.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 66.28 RCW  
35 to read as follows:

36 (1) Notwithstanding any prohibitions and restrictions contained in  
37 this title, it shall be lawful for an industry member or affiliate to

1 have a direct or indirect financial interest in another industry member  
2 or a retailer, and for a retailer or affiliate to have a direct or  
3 indirect financial interest in an industry member unless such interest  
4 has resulted or is more likely than not to result in undue influence  
5 over the retailer or the industry member or has resulted or is more  
6 likely than not to result in an adverse impact on public health and  
7 safety. The structure of any such financial interest must be  
8 consistent with subsection (2) of this section.

9 (2) Subject to subsection (1) of this section and except as  
10 provided in section 4 of this act:

11 (a) An industry member in whose name a license or certificate of  
12 approval has been issued pursuant to this title may wholly own or hold  
13 a financial interest in a separate legal entity licensed pursuant to  
14 RCW 66.24.320 through 66.24.570, but may not have such a license issued  
15 in its name; and

16 (b) A retailer in whose name a license has been issued pursuant to  
17 this title may wholly own or hold a financial interest in a separate  
18 legal entity licensed or holding a certificate of approval pursuant to  
19 RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2),  
20 66.24.200, or 66.24.250, but may not have such a license or certificate  
21 of approval issued in its name; and

22 (c) A supplier in whose name a license or certificate of approval  
23 has been issued pursuant to this title may wholly own or hold a  
24 financial interest in a separate legal entity licensed as a distributor  
25 or importer under this title, but such supplier may not have a license  
26 as a distributor or importer issued in its own name; and

27 (d) A distributor or importer in whose name a license has been  
28 issued pursuant to this title may wholly own or hold a financial  
29 interest in a separate legal entity licensed or holding a certificate  
30 of approval as a supplier under this title, but such distributor or  
31 importer may not have a license or certificate of approval as a  
32 supplier issued in its own name.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 66.28 RCW  
34 to read as follows:

35 Nothing in section 3 of this act shall prohibit:  
36 (1) A licensed domestic brewery or microbrewery from being licensed

1 as a retailer pursuant to chapter 66.24 RCW for the purpose of selling  
2 beer or wine at retail on the brewery premises and at one additional  
3 off-site retail only location.

4 (2) A domestic winery from being licensed as a retailer pursuant to  
5 chapter 66.24 RCW for the purpose of selling beer or wine at retail on  
6 the winery premises. Such beer and wine so sold at retail shall be  
7 subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to  
8 reporting and bonding requirements as prescribed by regulations adopted  
9 by the board pursuant to chapter 34.05 RCW, and beer and wine that is  
10 not produced by the brewery or winery shall be purchased from a  
11 licensed beer or wine distributor.

12 (3) A microbrewery holding a beer and/or wine restaurant license  
13 under RCW 66.24.320 from holding the same privileges and endorsements  
14 attached to the beer and/or wine restaurant license.

15 (4) A licensed craft distillery from selling spirits of its own  
16 production under RCW 66.24.145.

17 (5) A licensed distiller, domestic brewery, microbrewery, domestic  
18 winery, or a lessee of a licensed domestic brewer, microbrewery, or  
19 domestic winery, from being licensed as a spirits, beer, and wine  
20 restaurant pursuant to chapter 66.24 RCW for the purpose of selling  
21 liquor at a spirits, beer, and wine restaurant premises on the property  
22 on which the primary manufacturing facility of the licensed distiller,  
23 domestic brewer, microbrewery, or domestic winery is located or on  
24 contiguous property owned or leased by the licensed distiller, domestic  
25 brewer, microbrewery, or domestic winery as prescribed by rules adopted  
26 by the board pursuant to chapter 34.05 RCW.

27 (6) A microbrewery holding a spirits, beer, and wine restaurant  
28 license under RCW 66.24.420 from holding the same privileges and  
29 endorsements attached to the spirits, beer, and wine restaurant  
30 license.

31 (7) A brewery or microbrewery holding a spirits, beer, and wine  
32 restaurant license or a beer and/or wine license under chapter 66.24  
33 RCW operated on the premises of the brewery or microbrewery from  
34 holding a second retail only license at a location separate from the  
35 premises of the brewery or microbrewery.

36 (8) Retail licensees with a caterer's endorsement issued under RCW  
37 66.24.320 or 66.24.420 from operating on a domestic winery premises.

1 (9) An organization qualifying under RCW 66.24.375 formed for the  
2 purpose of constructing and operating a facility to promote Washington  
3 wines from holding retail licenses on the facility property or leasing  
4 all or any portion of such facility property to a retail licensee on  
5 the facility property if the members of the board of directors or  
6 officers of the board for the organization include officers, directors,  
7 owners, or employees of a licensed domestic winery. Financing for the  
8 construction of the facility must include both public and private  
9 money.

10 (10) A bona fide charitable nonprofit society or association  
11 registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal  
12 revenue code, or a local wine industry association registered under  
13 Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as  
14 it existed on July 22, 2007, and having an officer, director, owner, or  
15 employee of a licensed domestic winery or a wine certificate of  
16 approval holder on its board of directors from holding a special  
17 occasion license under RCW 66.24.380.

18 (11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or  
19 66.24.244 from exercising the privileges of distributing and selling at  
20 retail such person's own production or from exercising any other right  
21 or privilege that attaches to such license.

22 (12) A person holding a certificate of approval pursuant to RCW  
23 66.24.206 from obtaining an endorsement to act as a distributor of  
24 their own product or from shipping their own product directly to  
25 consumers as authorized by RCW 66.20.360.

26 (13) A person holding a wine shipper's permit pursuant to RCW  
27 66.20.375 from shipping their own product directly to consumers.

28 (14) A person holding a certificate of approval pursuant to RCW  
29 66.24.270(2) from obtaining an endorsement to act as a distributor of  
30 their own product.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 66.28 RCW  
32 to read as follows:

33 Any industry member or retailer or any other person seeking a  
34 determination by the board as to whether a proposed or existing  
35 financial interest has resulted or is more likely than not to result in  
36 undue influence or has resulted or is more likely than not to result in  
37 an adverse impact on public health and safety may file a complaint or

1 request for determination with the board. Upon receipt of a request or  
2 complaint the board may conduct such investigation as it deems  
3 appropriate in the circumstances. If the investigation reveals the  
4 financial interest has resulted or is more likely than not to result in  
5 undue influence or has resulted or is more likely than not to result in  
6 an adverse impact on public health and safety the board may issue an  
7 administrative violation notice or a notice of intent to deny the  
8 license to the industry member, to the retailer, or both. If the  
9 financial interest was acquired through a transaction that has already  
10 been consummated when the board issues its administrative violation  
11 notice, the board shall have the authority to require that the  
12 transaction be rescinded or otherwise undone. The recipient of the  
13 administrative notice of violation or notice of intent to deny the  
14 license may request a hearing under chapter 34.05 RCW.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 66.28 RCW  
16 to read as follows:

17 Except as provided in section 7 of this act, no industry member  
18 shall advance and no retailer shall receive moneys or moneys' worth  
19 under an agreement written or unwritten or by means of any other  
20 business practice or arrangement.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 66.28 RCW  
22 to read as follows:

23 (1)(a) Nothing in section 6 of this act prohibits an industry  
24 member from providing retailers branded promotional items which are of  
25 nominal value, singly or in the aggregate. Such items include but are  
26 not limited to: Trays, lighters, blotters, postcards, pencils,  
27 coasters, menu cards, meal checks, napkins, clocks, mugs, glasses,  
28 bottles or can openers, corkscrews, matches, printed recipes, shirts,  
29 hats, visors, and other similar items. Branded promotional items:

30 (i) Must be used exclusively by the retailer or its employees in a  
31 manner consistent with its license;

32 (ii) Must bear imprinted advertising matter of the industry member  
33 only;

34 (iii) May be provided by industry members only to retailers and  
35 their employees and may not be provided by or through retailers or  
36 their employees to retail customers; and



1 (iv) May not be targeted to or appeal principally to youth.

2 (b) An industry member is not obligated to provide any such branded  
3 promotional items, and a retailer may not require an industry member to  
4 provide such branded promotional items as a condition for selling any  
5 alcohol to the retailer.

6 (c) Any industry member or retailer or any other person asserting  
7 that the provision of branded promotional items as allowed in (a) of  
8 this subsection has resulted or is more likely than not to result in  
9 undue influence or an adverse impact on public health and safety, or is  
10 otherwise inconsistent with the criteria in (a) of this subsection may  
11 file a complaint with the board. Upon receipt of a complaint the board  
12 may conduct such investigation as it deems appropriate in the  
13 circumstances. If the investigation reveals the provision of branded  
14 promotional items has resulted in or is more likely than not to result  
15 in undue influence or has resulted or is more likely than not to result  
16 in an adverse impact on public health and safety or is otherwise  
17 inconsistent with (a) of this subsection the board may issue an  
18 administrative violation notice to the industry member, to the  
19 retailer, or both. The recipient of the administrative violation  
20 notice may request a hearing under chapter 34.05 RCW.

21 (2) Nothing in section 6 of this act prohibits an industry member  
22 from providing to a special occasion licensee and a special occasion  
23 licensee from receiving services for:

24 (a) Installation of draft beer dispensing equipment or advertising;  
25 or

26 (b) Advertising, pouring, or dispensing of beer or wine at a beer  
27 or wine tasting exhibition or judging event.

28 (3) Nothing in section 6 of this act prohibits industry members  
29 from performing, and retailers from accepting the service of building,  
30 rotating, and restocking displays and stockroom inventories; rotating  
31 and rearranging can and bottle displays of their own products;  
32 providing point of sale material and brand signs; pricing case goods of  
33 their own brands; and performing such similar business services  
34 consistent with board rules, or personal services as described in  
35 subsection (5) of this section.

36 (4) Nothing in section 6 of this act prohibits:

37 (a) Industry members from listing on their internet web sites

1 information related to retailers who sell or promote their products,  
2 including direct links to the retailers' internet web sites; and

3 (b) Retailers from listing on their internet web sites information  
4 related to industry members whose products those retailers sell or  
5 promote, including direct links to the industry members' web sites; or

6 (c) Industry members and retailers from producing, jointly or  
7 together with regional, state, or local industry associations,  
8 brochures and materials promoting tourism in Washington state which  
9 contain information regarding retail licensees, industry members, and  
10 their products.

11 (5) Nothing in section 6 of this act prohibits the performance of  
12 personal services offered from time to time by a domestic winery or  
13 certificate of approval holder to retailers when the personal services  
14 are (a) conducted at a licensed premises, and (b) intended to inform,  
15 educate, or enhance customers' knowledge or experience of the  
16 manufacturer's products. The performance of personal services may  
17 include participation and pouring, bottle signing events, and other  
18 similar informational or educational activities at the premises of a  
19 retailer holding a spirits, beer, and wine restaurant license, a wine  
20 and/or beer restaurant license, a specialty wine shop license, a  
21 special occasion license, or a private club license. A domestic winery  
22 or certificate of approval holder is not obligated to perform any such  
23 personal services, and a retail licensee may not require a domestic  
24 winery or certificate of approval holder to conduct any personal  
25 service as a condition for selling any alcohol to the retail licensee.  
26 Except as provided in RCW 66.28.150, the cost of sampling may not be  
27 borne, directly or indirectly, by any domestic winery or certificate of  
28 approval holder or any distributor. Nothing in this section prohibits  
29 wineries, certificate of approval holders, and retail licensees from  
30 identifying the producers on private labels authorized under RCW  
31 66.24.400, 66.24.425, and 66.24.450.

32 (6) Nothing in section 6 of this act prohibits an industry member  
33 from entering into an arrangement with any holder of a sports  
34 entertainment facility license or an affiliated business for brand  
35 advertising at the licensed facility or promoting events held at the  
36 sports entertainment facility as authorized under RCW 66.24.570.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 66.28 RCW  
2 to read as follows:

3        All industry members and retailers shall keep and maintain the  
4 following records on their premises for a three-year period:

5        (1) Records of all items, services, and moneys' worth furnished to  
6 and received by a retailer and of all items, services, and moneys'  
7 worth provided to a retailer and purchased by a retailer at fair market  
8 value; and

9        (2) Records of all industry member financial ownership or interests  
10 in a retailer and of all retailer financial ownership interests in an  
11 industry member.

12        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 66.28 RCW  
13 to read as follows:

14        The board shall adopt rules as are deemed necessary to carry out  
15 the purposes and provisions of this chapter in accordance with the  
16 administrative procedure act, chapter 34.05 RCW.

17        **Sec. 10.**    RCW 66.28.180 and 2006 c 302 s 10 are each amended to  
18 read as follows:

19        ~~((It is unlawful for a person, firm, or corporation holding a  
20 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer  
21 distributor's license, a domestic brewery license, a microbrewery  
22 license, a beer importer's license, a beer distributor's license, a  
23 domestic winery license, a wine importer's license, or a wine  
24 distributor's license within the state of Washington to modify any  
25 prices without prior notification to and approval of the board.~~

26        ~~(1) Intent. This section is enacted, pursuant to the authority of  
27 this state under the twenty-first amendment to the United States  
28 Constitution, to promote the public's interest in fostering the orderly  
29 and responsible distribution of malt beverages and wine towards  
30 effective control of consumption; to promote the fair and efficient  
31 three-tier system of distribution of such beverages; and to confirm  
32 existing board rules as the clear expression of state policy to  
33 regulate the manner of selling and pricing of wine and malt beverages  
34 by licensed suppliers and distributors.~~

35        ~~(2))~~ (1) Beer and wine distributors ~~((price posting))~~.

1 (a) Every beer or wine distributor shall ~~((file with the board at~~  
2 ~~its office in Olympia))~~ maintain at its liquor licensed location a  
3 price ~~((posting))~~ list showing the wholesale prices at which any and  
4 all brands of beer and wine sold by such beer and/or wine distributor  
5 shall be sold to retailers within the state.

6 (b) Each price ~~((posting shall be made on a form prepared and~~  
7 ~~furnished by the board, or a reasonable facsimile thereof, and))~~ list  
8 shall set forth:

9 (i) All brands, types, packages, and containers of beer or wine  
10 offered for sale by such beer and/or wine distributor; and

11 (ii) The wholesale prices thereof to retail licensees, including  
12 allowances, if any, for returned empty containers.

13 (c) No beer and/or wine distributor may sell or offer to sell any  
14 package or container of beer or wine to any retail licensee at a price  
15 differing from the price for such package or container as shown in the  
16 price ~~((posting filed by the beer and/or wine distributor and then in~~  
17 ~~effect))~~ list, according to rules adopted by the board.

18 (d) Quantity discounts are prohibited. No price may be ~~((posted~~  
19 ~~that is))~~ below acquisition cost ~~((plus ten percent of acquisition~~  
20 ~~cost. However, the board is empowered to review periodically, as it~~  
21 ~~may deem appropriate, the amount of the percentage of acquisition cost~~  
22 ~~as a minimum mark up over cost and to modify such percentage by rule of~~  
23 ~~the board, except such percentage shall be not less than ten percent)).~~

24 (e) Distributor prices on a "close-out" item shall be ~~((accepted by~~  
25 ~~the board))~~ allowed if the item to be discontinued has been listed ~~((on~~  
26 ~~the state market))~~ for a period of at least six months, and upon the  
27 further condition that the distributor who ~~((posts))~~ offers such a  
28 close-out price shall not restock the item for a period of one year  
29 following the first effective date of such close-out price.

30 (f) ~~((The board may reject any price posting that it deems to be in~~  
31 ~~violation of this section or any rule, or portion thereof, or that~~  
32 ~~would tend to disrupt the orderly sale and distribution of beer and~~  
33 ~~wine. Whenever the board rejects any posting, the licensee submitting~~  
34 ~~the posting may be heard by the board and shall have the burden of~~  
35 ~~showing that the posting is not in violation of this section or a rule~~  
36 ~~or does not tend to disrupt the orderly sale and distribution of beer~~  
37 ~~and wine. If the posting is accepted, it shall become effective at the~~  
38 ~~time fixed by the board. If the posting is rejected, the last~~

1 ~~effective posting shall remain in effect until such time as an amended~~  
2 ~~posting is filed and approved, in accordance with the provisions of~~  
3 ~~this section.~~

4 ~~(g) Prior to the effective date of the posted prices, all price~~  
5 ~~postings filed as required by this section constitute investigative~~  
6 ~~information and shall not be subject to disclosure, pursuant to RCW~~  
7 ~~42.56.240(1).~~

8 ~~(h))~~ Any beer and/or wine distributor or employee authorized by  
9 the distributor-employer may sell beer and/or wine at the distributor's  
10 ~~((posted))~~ listed prices to any annual or special occasion retail  
11 licensee upon presentation to the distributor or employee at the time  
12 of purchase of a special permit issued by the board to such licensee.

13 ~~((i))~~ (g) Every annual or special occasion retail licensee, upon  
14 purchasing any beer and/or wine from a distributor, shall immediately  
15 cause such beer or wine to be delivered to the licensed premises, and  
16 the licensee shall not thereafter permit such beer to be disposed of in  
17 any manner except as authorized by the license.

18 ~~((ii))~~ (h) Beer and wine sold as provided in this section shall  
19 be delivered by the distributor or an authorized employee either to the  
20 retailer's licensed premises or directly to the retailer at the  
21 distributor's licensed premises. When a domestic winery, brewery,  
22 microbrewery, or certificate of approval holder with a direct shipping  
23 endorsement is acting as a distributor of its own production, a  
24 licensed retailer may contract with a common carrier to obtain the  
25 product directly from the domestic winery, brewery, microbrewery, or  
26 certificate of approval holder with a direct shipping endorsement. A  
27 distributor's prices to retail licensees shall be the same at both such  
28 places of delivery.

29 ~~((3))~~ (2) Beer and wine suppliers' ~~((price filings,))~~  
30 contracts~~((7))~~ and memoranda.

31 (a) Every domestic brewery, microbrewery, ~~((and))~~ domestic winery,  
32 certificate of approval holder, and beer and/or wine importer offering  
33 beer and/or wine for sale within the state and any beer and/or wine  
34 distributor who sells to other beer and/or wine distributors shall  
35 ~~((file with the board at its office in Olympia))~~ maintain at its liquor  
36 licensed location a price list and a copy of every written contract and  
37 a memorandum of every oral agreement which such brewery or winery may  
38 have with any beer or wine distributor, which contracts or memoranda

1 shall contain ~~((a schedule of prices charged to distributors for all~~  
2 ~~items and all terms of sale, including all regular and special~~  
3 ~~discounts))~~);

4 (i) All advertising, sales and trade allowances, and incentive  
5 programs; and

6 (ii) All commissions, bonuses or gifts, and any and all other  
7 discounts or allowances.

8 (b) Whenever changed or modified, such revised contracts or  
9 memoranda shall ~~((forthwith))~~ also be ~~((filed with the board as~~  
10 ~~provided for by rule. The provisions of this section also apply to~~  
11 ~~certificate of approval holders, beer and/or wine importers, and beer~~  
12 ~~and/or wine distributors who sell to other beer and/or wine~~  
13 ~~distributors))~~ maintained at its liquor licensed location.

14 (c) Each price ~~((schedule shall be made on a form prepared and~~  
15 ~~furnished by the board, or a reasonable facsimile thereof, and))~~ list  
16 shall set forth all brands, types, packages, and containers of beer or  
17 wine offered for sale by such licensed brewery or winery~~((; all~~  
18 ~~additional information required may be filed as a supplement to the~~  
19 ~~price schedule forms))~~.

20 ~~((b))~~ (d) Prices ~~((filed by))~~ of a domestic brewery,  
21 microbrewery, domestic winery, or certificate of approval holder shall  
22 be uniform prices to all distributors or retailers on a statewide basis  
23 less bona fide allowances for freight differentials. Quantity  
24 discounts are prohibited. No price shall be ~~((filed that is))~~ below  
25 acquisition/production cost ~~((plus ten percent of that cost, except~~  
26 ~~that acquisition cost plus ten percent of acquisition cost does not~~  
27 ~~apply to sales of beer or wine between a beer or wine importer who~~  
28 ~~sells beer or wine to another beer or wine importer or to a beer or~~  
29 ~~wine distributor, or to a beer or wine distributor who sells beer or~~  
30 ~~wine to another beer or wine distributor. However, the board is~~  
31 ~~empowered to review periodically, as it may deem appropriate, the~~  
32 ~~amount of the percentage of acquisition/production cost as a minimum~~  
33 ~~mark-up over cost and to modify such percentage by rule of the board,~~  
34 ~~except such percentage shall be not less than ten percent))~~.

35 ~~((c) No))~~ (e) A domestic brewery, microbrewery, domestic winery,  
36 certificate of approval holder, beer or wine importer, or beer or wine  
37 distributor ~~((may sell or offer to sell any beer or wine to any persons~~  
38 ~~whatsoever in this state until copies of such written contracts or~~

1 ~~memoranda of such oral agreements are on file with the board))~~ acting  
2 as a supplier to another distributor must file a distributor  
3 appointment with the board.

4 ~~((d))~~ (f) No domestic brewery, microbrewery, domestic winery, or  
5 certificate of approval holder may sell or offer to sell any package or  
6 container of beer or wine to any distributor at a price differing from  
7 the price list for such package or container as shown in the ~~((schedule~~  
8 ~~of prices filed by))~~ price list of the domestic brewery, microbrewery,  
9 domestic winery, or certificate of approval holder and then in effect,  
10 according to rules adopted by the board.

11 ~~((e) The board may reject any supplier's price filing, contract,~~  
12 ~~or memorandum of oral agreement, or portion thereof that it deems to be~~  
13 ~~in violation of this section or any rule or that would tend to disrupt~~  
14 ~~the orderly sale and distribution of beer or wine. Whenever the board~~  
15 ~~rejects any such price filing, contract, or memorandum, the licensee~~  
16 ~~submitting the price filing, contract, or memorandum may be heard by~~  
17 ~~the board and shall have the burden of showing that the price filing,~~  
18 ~~contract, or memorandum is not in violation of this section or a rule~~  
19 ~~or does not tend to disrupt the orderly sale and distribution of beer~~  
20 ~~or wine. If the price filing, contract, or memorandum is accepted, it~~  
21 ~~shall become effective at a time fixed by the board. If the price~~  
22 ~~filing, contract, or memorandum, or portion thereof, is rejected, the~~  
23 ~~last effective price filing, contract, or memorandum shall remain in~~  
24 ~~effect until such time as an amended price filing, contract, or~~  
25 ~~memorandum is filed and approved, in accordance with the provisions of~~  
26 ~~this section.~~

27 ~~(f) Prior to the effective date of the posted prices, all prices,~~  
28 ~~contracts, and memoranda filed as required by this section constitute~~  
29 ~~investigative information and shall not be subject to disclosure,~~  
30 ~~pursuant to RCW 42.56.240(1).)~~

31 NEW SECTION. **Sec. 11.** RCW 66.28.010 (Manufacturers, importers,  
32 distributors, and authorized representatives barred from interest in  
33 retail business or location--Advances prohibited--"Financial interest"  
34 defined--Exceptions) and 2008 c 94 s 5 are each repealed.

35 NEW SECTION. **Sec. 12.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

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